

## **EXHIBIT B**

## **GUIDELINES OF HANDLING THIRD PARTY GUIDELINES**

In the past few months, a number of issues surrounding the handling of third party caskets by funeral homes have arisen. Because the FTC Funeral Rule does not specifically address many of these issues, funeral directors may be unclear as to their precise obligations in handling third party merchandise. Adding to the confusion is the flurry of unfounded claims being made by third party casket sellers and their new organization, the National Casket Retailers Association.

To assist NFDA members in knowing their rights and obligations with regard to third party caskets, NFDA has prepared two guidelines which will help members in dealing with families using third party caskets and with suppliers of third party caskets. In addition, we had provided a guideline on permissible and impermissible pricing methods that may involve third party caskets.

### **DEALING WITH FAMILIES USING THIRD PARTY CASKETS**

1. Providing Services. A funeral home should never refuse service to a family because it indicates that it will be using a third party casket. The funeral home may not discriminate in any manner against the family in the level or type of service provided. Do not attempt to dissuade a family from utilizing a third party casket by disparaging the quality of the casket. Of course, a funeral home may try to persuade a family to purchase a casket from the funeral home by comparing prices and the quality of products offered.

2. Delivery of Casket. A funeral home may not require the family to be present when the third party casket is delivered to the funeral home. The funeral home may, however, request the family to sign a form authorizing the funeral home to accept the casket on the consumer's behalf. We would recommend utilizing the NFDA form entitled Use of Third Party Merchandise. This form authorizes the

funeral home to accept the third party casket and relieves the funeral home from any obligation to inspect the casket.

3. Defective or Damaged Casket. If the third party casket is defective or damaged in any respect when delivered, the funeral home should point out the defect or damage to the third party supplier (see next section). In addition, the funeral director should immediately alert the family and indicate to them the defect or damage noticed. When discussing the condition of the casket with the family, do not disparage the quality of the casket. Rather, the funeral director should objectively point out the defects or the damage.

4. Inspection of the Casket. Prior to the visitation or a funeral service where the body will be present in the casket, the funeral home should have the family inspect the casket in order to verify that it is the casket they purchased from the third party supplier. If the casket has any defects or damage and the funeral home has not previously pointed them out to the family, it should do so at this time. Again, do not disparage the quality of the casket or the third party supplier. Rather, in a very objective manner, the funeral director should indicate any defects or damage to the casket.

5. Indemnification Forms. When a family indicates it will utilize a third party casket, NFDA advises funeral directors to **request** the family to sign NFDA's form entitled Use of Third Party Merchandise or a similar indemnification form. While the funeral home may request the family to sign the form, it may not require that the family sign the form as a condition of accepting the casket. In other words, never inform or suggest to the family that they are required to sign the indemnification form. If the family refuses to sign the form, the funeral home must still service the third party casket without discriminating against the family in any manner. Upon the refusal of a family to sign the indemnification form, the funeral director should provide them with a copy of the unsigned form and should note on another copy of the form the date and time that it was provided to the family and the fact that the family declined to sign the form.

6. Rejection of Casket. If in the objective opinion of the funeral director the third party casket is not structurally sound to hold and transport the body or if it presents a safety risk to pallbearers or

funeral home personnel, the casket may be rejected. However, because the decision by the funeral home to reject a third party casket will undoubtedly draw scrutiny from the FTC and state officials, funeral directors are strongly advised to be cautious in rejecting any third party casket. Prior to declining to use the casket, the funeral director should consult with the family and point out to them why the casket is defective and the risk it poses.

<b>DEALING WITH THIRD PARTY CASKET SUPPLIERS</b>
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1. Delivery of Caskets. When arranging to take delivery of a third party casket, the funeral home may not impose on the third party supplier any special restrictions on the time or manner of delivery. NFDA advises as a rule of thumb that the funeral home should treat the third party supplier as it treats its wholesale supplier of caskets. If the funeral home assists its wholesale casket supplier in unloading caskets, it should extend the same courtesy to third party suppliers. However, no special concessions need to be extended to third party suppliers. For example, if the funeral home accepts delivery of caskets from its wholesale suppliers only during normal business hours, it can impose the same restriction on third party suppliers.

2. Receipt of Third Party Caskets. When the funeral home receives the third party casket, NFDA recommends it provide the supplier with the NFDA form entitled Receipt of Third Party Merchandise. On this form, the funeral home acknowledges receipt of the third party casket and explains to the supplier that receipt of the casket does not constitute legal acceptance of the casket. Only the family may accept the casket in the legal sense since the contract of purchase is directly between the supplier and the family. The Receipt of Third Party Merchandise form also provides the funeral director with the opportunity to record any visible defects in the casket at its delivery. While the funeral home cannot require the third party supplier to sign the form, it should provide the supplier with the form that has been signed by the funeral home. A copy of the form should be maintained in the funeral home files.

3. Inspection of the Third Party Casket. As stated in the Use of Third Party Merchandise form presented to the family and the Receipt of Third Party Merchandise form presented to the supplier, the funeral director is under no duty to inspect the third party casket when it is delivered. Nevertheless, to protect the funeral home from claims that it damaged the casket after delivery to the funeral home, it is recommended that the funeral home make an inspection of the casket upon delivery and note any visible defects. The Receipt of Third Party Merchandise form may be used for this purpose.

<b>PRICING PRACTICES</b>
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1. No Handling Fees. The funeral home may not charge any type of fee for handling a third party casket. There should not be an inspection fee, delivery fee, casket set up fee or any type of charge imposed against the family who elects to bring a casket to the funeral home.

2. Discount Packages. In order to encourage families to purchase the casket from the funeral home, a funeral home may offer discount packages to those consumers who purchase a casket from the funeral home. Some third party casket sellers have claimed that restricting discount package offerings only to families who purchase a casket from the funeral home constitutes an unlawful sham discount. However, the United States Court of Appeals has passed on this very issue when it distinguished a direct casket handling fee from a discount package that was only available to families who purchase a casket from the funeral home. In that regard, the Court found the latter pricing scheme to be legal. The Court ruled as follows:

" . . . the FTC distinguishes direct casket handling fees from offering discounts to people who buy caskets from the funeral home. The former is an anti-competitive penalty (the fee) and the latter is a method used to deal with competition from the third party casket sellers which is pro-competitive. The fee essentially requires consumers to buy their caskets from funeral homes, or pay for it anyway. The other methods (e.g., discounts) represents a way to encourage consumers to buy their caskets from funeral homes."

It is clear from the ruling of the Court that limiting discounted packages only to consumers who purchase caskets from the funeral home is a legitimate method to compete against third party casket sellers.

3. Prohibition Against Discounting the Non-Declinable Service Fee. While funeral directors are free to offer discount packages to families who purchase a casket from the funeral home, they should not offer to discount the non-declinable basic service fee for those families who buy a casket from the funeral home. This is one discount that the FTC would challenge as an unlawful reverse handling fee. Therefore, the non-declinable basic service fee should be the same for consumers who buy caskets from the funeral home as well as consumers who use a third party casket.

4. Unreasonable Discounts. While funeral homes are free to offer discounted packages to encourage families to select a casket from the funeral home, they may not make the discounts unreasonable. For example, if a funeral home raised its itemized prices for a typical funeral home to \$10,000.00 and then offered a \$3,000.00 funeral package to consumers purchasing a casket from the funeral home, it would open itself up to a claim that it is employing sham discounts. The amount of the discount should have some reasonable relationship to the revenue the funeral home would expect to earn on the sale of the casket.

If NFDA members have any questions regarding their rights and obligations in handling third party merchandise, please feel free to contact NFDA General Counsel, T. Scott Gilligan at (513) 241-5540.

## USE OF THIRD PARTY MERCHANDISE

1. **PARTIES:**

"FUNERAL HOME": \_\_\_\_\_

(Name of Funeral Home)

"REPRESENTATIVE": \_\_\_\_\_

(Use Reverse Side  
for Additional Names)

(Name of Representative)

"DECEDENT": \_\_\_\_\_

(Name of Decedent)

2. **RELATIONSHIP OF REPRESENTATIVE:** The REPRESENTATIVE warrants and represents to the FUNERAL HOME that the relationship between the REPRESENTATIVE and the DECEDENT is as follows: (Check the appropriate box)

☐

Spouse

☐

Next-of-Kin (Closest Living Relative)

☐

Personal Representative of the Next-of-Kin with written authorization of  
Next-of-Kin to act on his or her behalf.

☐

Other: \_\_\_\_\_

3. **AUTHORITY OF REPRESENTATIVE:** The REPRESENTATIVE warrants and represents to FUNERAL HOME that the REPRESENTATIVE is the person or the appointed agent of the person who by law has the paramount right to arrange and direct the disposition of the remains of the DECEDENT and that no other person(s) has a superior right over the right of the REPRESENTATIVE.

4. **ASSUMPTION OF LIABILITY:** The REPRESENTATIVE hereby assumes all liability arising out of the use of any funeral or burial merchandise or other product or the use of any motor vehicle supplied by or purchased from persons or businesses other than the FUNERAL HOME.

5. **INDEMNIFICATION:** The REPRESENTATIVE agrees to indemnify and hold harmless the FUNERAL HOME from any claims or causes of action arising or related in any respect to the REPRESENTATIVE's direction to the FUNERAL HOME to utilize funeral or burial merchandise or other products or the use of any motor vehicles supplied by or purchased from persons or firms other than the FUNERAL HOME.

6. **CASKET:** If the REPRESENTATIVE has elected to utilize a casket that is not provided by the FUNERAL HOME, the REPRESENTATIVE acknowledges responsibility for arranging and coordinating the delivery of the casket with the FUNERAL HOME. The REPRESENTATIVE acknowledges that the casket must be delivered sufficiently in advance of the scheduled funeral service so as to allow a reasonable amount of time for the FUNERAL HOME to properly prepare the deceased for the arranged funeral ceremony. Under normal and reasonable circumstances, delivery of the casket should occur at least 24 hours in advance of any ceremony involving casketed remains. The REPRESENTATIVE authorizes the FUNERAL HOME to accept, unconditionally, the delivery of the casket. If the REPRESENTATIVE decides after inspection of the casket that the casket is unacceptable, the REPRESENTATIVE understands that this could delay and cause the originally scheduled funeral service to be rescheduled and that additional funeral charges could be added to compensate for the time incurred in rescheduling the ceremony.

**DATE:**

**SIGNATURE OF REPRESENTATIVE:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**ADDITIONAL REPRESENTATIVES**

**Name**

**Relationship to Decedent**

**Signature**

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## RECEIPT OF THIRD PARTY MERCHANDISE

1. **PARTIES:**

"FUNERAL HOME": \_\_\_\_\_

\_\_\_\_\_  
(Name of Funeral Home)

"SUPPLIER": \_\_\_\_\_

\_\_\_\_\_  
(Name of Supplier of Merchandise)

"DECEDENT": \_\_\_\_\_

\_\_\_\_\_  
(Name of Decedent)

"MERCHANDISE": \_\_\_\_\_

\_\_\_\_\_  
(Description of Merchandise Including Manufacturer Name, Model Name and Model Number)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. **RECEIPT:** The FUNERAL HOME acknowledges receipt from the SUPPLIER of the MERCHANDISE described above for use in the funeral of the DECEDENT. The receipt of the MERCHANDISE by the FUNERAL HOME does not constitute in any respect acceptance of the MERCHANDISE or its condition. Any such acceptance may only be given by the purchaser of the MERCHANDISE.

3. **VISIBLE DEFECTS OR CONDITIONS:** Although under no duty to inspect the MERCHANDISE, the FUNERAL HOME has noted below the following defects and/or conditions of the MERCHADISE at the time of delivery:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

**SUPPLIER:**

**FUNERAL HOME:**

By: \_\_\_\_\_

By: \_\_\_\_\_

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